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11-5-2015

# State v. Miller Appellant's Reply Brief Dckt. 43192

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43192
	)	
v.	)	CANYON COUNTY
	)	NO. CR 2014-23453
	)	
TIMOTHY J. MILLER,	)	APPELLANT'S
	)	REPLY BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Timothy Joshua Miller pled guilty to domestic battery with traumatic injury, the district court sentenced him to seven years, with three years fixed, and retained jurisdiction. Mr. Miller moved for reconsideration of his sentence under Idaho Criminal Rule 35 ("Rule 35"), which the district court denied without a hearing. Mr. Miller now appeals from the district court's judgment of conviction and its subsequent order denying his motion for reconsideration.

## Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were articulated in Mr. Miller's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

## ISSUES

1. Did the district court abuse its discretion when it imposed a unified sentence of seven years, with three years fixed, upon Mr. Miller, following his guilty plea to domestic battery with traumatic injury?
2. Did the district court abuse its discretion when it denied Mr. Miller's motion for reconsideration of his sentence?

## ARGUMENT

I.

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Three Years Fixed, Upon Mr. Miller, Following His Guilty Plea To Domestic Battery With Traumatic Injury

Mr. Miller respectfully refers this Court to his arguments in his Appellant's Brief on the issue of whether the district court abused its discretion by imposing an excessive sentence.

II.

### The District Court Abused Its Discretion When It Denied Mr. Miller's Motion For Reconsideration Of His Sentence

In response to Mr. Miller's argument on this issue, the State asserts that Mr. Miller "provided no new information in support of his Rule 35 motion." (Resp't's Br., p.3.) Mr. Miller respectfully disagrees. Mr. Miller presented a Progress Report from Family Counseling Services. (Aug. R., Suppl. to Rule 35 Mot., p.3.) "When presenting a

Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007). Because Mr. Miller presented new information, this issue is properly before this Court for appellate review.

The State contends that this Progress Report was before the district court at the time of sentencing. The Progress Report before the district court at sentencing, however, was dated March 19, 2015. (PSI, p.15.)<sup>1</sup> The Progress Report submitted with Mr. Miller’s Rule 35 motion was dated April 24, 2015. (Aug. R., Suppl. to Rule 35 Mot., p.3.) Thus, the Progress Report submitted with Mr. Miller’s Rule 35 motion provided new, updated information on Mr. Miller’s domestic violence treatment. In light of this new information presented to the district court, Mr. Miller submits that the issue of whether the district court abused its discretion by denying his Rule 35 motion is properly before this Court.

### CONCLUSION

Mr. Miller respectfully requests that this Court reduce his sentence as it deems appropriate, or that his case be remanded to the district court for a new sentencing hearing. Alternatively, he requests that the order denying his motion for reconsideration be vacated and the case remanded to the district court for further proceedings.

DATED this 5<sup>th</sup> day of November, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

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<sup>1</sup> Page 15 of the electronic document titled “Miller PSI #43192” displays Page 13 of the PSI.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5<sup>th</sup> day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TIMOTHY J MILLER  
INMATE #72868  
CAPP  
15505 S PLEASANT VALLEY ROAD  
KUNA ID 83634

GEORGE A SOUTHWORTH  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

RYAN DOWELL  
CANYON COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCS/eas